

MEMORANDUM OF LAW

DATE: December 16, 1991
TO: Brian Fish, Southeast Economic Development Corporation
FROM: City Attorney
SUBJECT: Application of the California Environmental Quality Act
("CEQA") on the Southeast Economic Development Corporation's
("SEDC") Revolving Loan Fund Program

I am in receipt of your November 1, 1991, memorandum in which you ask two primary questions regarding the applicability of CEQA (codified as California Public Resources Code section 21000 et seq.) on SEDC's Revolving Loan Fund Program. By way of background the Revolving Loan Fund Program was established to assist small businesses by providing low interest loans for such things as equipment purchases, real property acquisition and working capital. According to your memorandum, the monies cannot be used for construction loans. While acknowledging that the determination regarding the applicability of CEQA would have to be made on a case by case basis, you ask the following:

1. Would CEQA apply to loans made for equipment purchases and provision of working capital?
 2. Could SEDC be considered the lead agency for purposes of CEQA?
- Each question will be dealt with separately.

Applicability of CEQA

The basic purpose of CEQA is set out in Public Resources Code section 21001. It reads in pertinent part:

(a) Develop and maintain a high-quality environment now and in the future, and take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state.

....

(f) Require governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality.

(g) Require governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to proposed actions affecting the environment.

Pursuant to Public Resources Code sections 21082, 21083 and 21087, a set of guidelines have been prepared for implementation of CEQA. Those guidelines, entitled the "State CEQA Guidelines" (Cal. Admin. Code tit.

14, Section 15000 et seq.) provide direction to public agencies in determining CEQA applicability.

State CEQA Guideline 15002(b) states that CEQA applies to "governmental action." Specifically, governmental actions are:

- (1) Activities directly undertaken by a governmental agency,
- (2) Activities financed in whole or in part by a governmental agency, or
- (3) Private activities which require approval from a governmental agency.

In determining whether a document such as an environmental impact report ("EIR") is needed, a public agency goes through a three step process. Those steps are: 1) A determination of whether the activity is subject to CEQA at all. If the activity is exempt, the inquiry stops there. 2) If the activity is not exempt, an initial study is conducted (see Section 15063) to determine whether the activity "may have a significant effect on the environment." 3) If the initial study shows the activity will have a significant effect, an EIR is prepared. Cal. Admin. Code tit. 14, Section 15002(k).

Regarding exemptions, California Administrative Code section 15061(b) states:

Possible exemptions from CEQA include:

- (1) The activity is not a project as defined in Section 15378.
- (2) The project has been granted an exemption by statute
....
- (3) The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

With the preceding in mind, it appears that awarding loans for equipment purchases and provision of working capital would be exempt from CEQA. This is based on the following:

1. The awarding of loans is a governmental activity under California Administrative Code section 15002(b)(2).
2. However, in following the three-step process referred to in Section 15002(k), it would appear that generally loans for equipment purchase and provision of working capital would be exempt, in that Section 15061(b)(3) states a project is exempt if "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment."

Please note however, that every loan will have to be reviewed by the

Lead Agency (further discussion below) to determine CEQA applicability, and this information is provided to give you general guidance as to the type of activities that may or may not prompt greater review. I cannot say as a matter of law that equipment purchases and provision of working capital would never have a significant impact on the environment.

SEDC Serving as Lead Agency

A Lead Agency is defined as:

¶To the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment.

Cal. Pub. Res. Code Section 21067.

As you point out, SEDC, acting on behalf of the Redevelopment Agency of The City of San Diego (the "Agency"), is serving as Lead Agency on projects that generate from redevelopment areas within SEDC's geographical jurisdiction. However, the Agency is a totally distinct and separate governmental entity from The City of San Diego (the "City"). The California Community Redevelopment Law (codified as Cal. Health and Safety Code Section 33000 et seq.) states in Section 33100, "There is in each community a public body, corporate and politic, known as the redevelopment agency of the community."

A redevelopment agency only has those powers prescribed to it under the California Community Redevelopment Law. California Health and Safety Code section 33122.

Accordingly, the Agency cannot take on powers or duties not specifically given to it under the law. This would include assuming the role of Lead Agency under CEQA for City projects that are not generated as a result of redevelopment activity as recognized by the California Community Redevelopment Law.

Conclusion

Generally speaking, loans given for equipment purchases and provision of working capital would be exempt from CEQA. The threshold question to be asked by the Lead Agency is whether the activity will have a significant effect on the environment.

The Lead Agency for the Revolving Loan Program is The City of San Diego. SEDC cannot assume that role by virtue of its relationship with the Agency.

If you have any questions, or wish further information, please feel free to call me.

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